Supreme Court, U.S.
FILED

03 265 AUG 14 2003
No.

In The
Supreme Court of the United States

Teresa and Larry Frakes,

Petitioners

v.

Precision Tune, Inc.,
John Garies, William Grimaud,
and Grimaud Enterprises, Inc.

Respondents

On Petition for Writ of Certiorari
To The Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Supreme Court of Alabama affirmed a lower court ruling that sent all six parties to Virginia, even though (a) four of the parties had absolutely no connection with Virginia, (b) Virginia was incapable of constitutionally exercising jurisdiction over all the parties, (c) the written agreement containing the forum selection clause (which formed the foundation of the Alabama Supreme Court's ruling) was not signed by four of the six parties, (d) the venue objection was not raised in the trial court until four years after suit had been filed, and (e) the claims sent to Virginia were based on the Alabama Deceptive Trade Practices Act (DTPA) – a statute specifically enacted to protect Alabama consumers from being victimized by the fraudulent marketing practices of predatory franchisors.

The questions raised in this appeal are:

1. Whether Virginia, which had no demonstrated connection with at least four of the six litigants, had the "minimal contacts" needed to sustain jurisdiction under *Hanson v. Denckla*, 357 U.S. 235 (1958).

2. Whether the "presumption of validity" accorded most forum selection clauses in commercial settings, should apply to consumer claims brought pursuant to state deceptive trade practices acts. *See M/S Bremen v.Zapata Off-Shore Co.*, 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972) (Forum selection clauses are

enforceable, so long as they are not unfair, unreasonable under the circumstances, or contrary to public policy).

3. Whether forum selection clauses in actions involving state consumer protection claims should be deemed "presumptively *invalid*," thereby shifting the burden on the moving party to demonstrate why the clause should be enforced.

4. Whether the Alabama Supreme Court's decision in the instant case violated due process and/or otherwise contravened federal law per *Bremen*, by sending the underlying case to Virginia when: (a) suit was filed pursuant to an Alabama statute specifically enacted to protect Alabama citizens from financial victimization, and/or unfair and deceptive trade practices, perpetrated by predatory, out-of-state franchisors. *Ala. Code 1975, § 8-19-1, et seq.*, (b) Petitioners were solicited in Alabama, and all parties were engaged in business there; (c) four of the six parties had no demonstrated contacts with Virginia; (d) Petitioners operated their franchise entirely within Alabama, and (e) Respondents' promises of full training and field support were made and/or performed (or, more accurately, *not* performed) in Alabama.

5. Whether Respondents' venue-based objections – which were raised long after the Alabama Supreme Court began enforcing forum choice clauses in written agreements – could be constitutionally raised for the first time, *consistent with due process principles*, four years after

suit had been filed, and in apparent contravention of Alabama procedural rules, i.e., Rule 12(h) (requiring such objections to be raised in the party's first responsive pleading).

PARTIES TO THE PROCEEDINGS BELOW

The Petitioners-Appellants below, and Petitioners in this Court, are **Teresa and Larry Frakes**, a husband and wife from Madison County, Alabama, who initially filed suit in Madison County, Alabama.

The Respondents-Appellees below, and Respondents in this Court, are **Precision Tune, Inc**. (a company that franchises auto repair centers in northern Alabama), **Grimaud Enterprises, Inc**. (exclusive sub-franchisor for Precision Tune in northern Alabama), **John Garies** (a recruiter and site selection manager for Precision Tune and Grimaud Enterprises in northern Alabama), and **William Grimaud** (a field manager for Grimaud Enterprises in northern Alabama).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Teresa and Larry Frakes, husband and wife, respectfully petition for a writ of certiorari to vacate and remand the judgment of the Alabama Supreme Court, which affirmed a trial court order sending the case to Virginia — a state with which four of six parties had no conceivable connection. Petitioner's request is based on this Court's ruling in *M/S Bremen v. Zapata Offshore Co.*, 407 U.S. 1 (1972) and subsequent decisions, all which hold that forum selection clauses are presumptively valid, but which

also state that such clauses should *not* be enforced if they are "unfair, unreasonable under the circumstances, or contrary to public policy."

In exporting this case to Virginia – a state incapable of constitutionally exercising jurisdiction over four of the six parties – the Alabama Supreme Court not only violated every major tenet of *Bremen*, but it also controverted federal constitutional law as articulated in *Hanson v. Denckla* (requiring that parties have "minimal contacts" with the forum state.

The Alabama Supreme Court also violated the due process rights of the Petitioners, and the public policy interests of the State of Alabama, which specifically enacted the DTPA to protect Alabama citizens from the unfair and deceptive trade practices of predatory out-of-state franchisors.

Issuance of a writ of certiorari is appropriate, not only to correct the Alabama Supreme Court's misapplication and misinterpretation of federal law, but to provide a litmus test to other courts, many of which are routinely being asked what weight to accord forum selection clauses in consumer protection cases, as opposed to forum selection clauses which arise in purely commercial settings.

Various other state courts, consistent with the public policy considerations identified in *Bremen*, have held forum selection clauses in such agreements presumptively

invalid. See e.g., Kubis v. Sun Microsystems, Inc., 680 A.2d 618 (NJ 1996) (legislature's intent as evidenced by enactment of franchise protection act, renders forum selection clauses in franchise agreements presumptively invalid per *Bremen*); *Triangle Trading Co., Inc. v. Robroy Indus., Inc.*, 952 F.Supp. 75 (D.P.R. 1997) (forum selection clause which violates public policy is unenforceable per *Bremen*); *Pinnacle Software v. Forms, Inc.* 1991 WL 834966 (Va. Cir. Ct.) (forum selection clause unenforceable when defendant had no contacts with Virginia).

OPINIONS BELOW

The opinion of the Alabama Supreme Court is not yet reported (A-1). The opinion of the Alabama Court of Civil Appeals is not reported (A-2 through A-3). The opinion of the Madison County Circuit Court is not reported (A-4 through A-10).

JURISDICTION

The judgment of the Alabama Supreme Court was entered on May 16, 2003. The jurisdiction of this Court rests on 28 U.S.C. § 1257. The decision below affirmed the decision of the Alabama Court of Civil Appeals, which upheld the trial court's dismissal of the case, and required that parties submit to the jurisdiction of the Virginia courts for resolution of any legal claims. The judgment below is therefore "final" for purposes of this Court's jurisdiction under § 1257.

Petitioners expressly raised below the questions presented in this petition, not only during oral argument in the trial court, but also in briefs filed with the Alabama Court of Civil Appeals, and in the Alabama Supreme Court.

The Alabama Supreme Court's dismissal of the appeal (based on alleged inadequacies in the state certiorari petition), cannot evade this Court's review by failing to discuss the questions raised in this appeal. *Chapman v. Goodnow's Adm'r.*, 123 U.S. 540, 548 (1887) ("If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects a claim, but avoids all reference to it, is as much against the right . . . as if it has been specifically referred to and the right directly refused.").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Article VI, cl. 2:

This constitution, and the law of the United States which shall be made in pursuance to and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land,; and the judges in every state shall be bound thereby, anything in the constitution of laws of any state to the contrary notwithstanding.

Ala. Code 1975, § 8-19-1 (Alabama Deceptive Trade Practices Act)

This chapter shall be known and may be cited as the "Deceptive Trade Practices Act.

Ala. Code 1975, § 8-19-2

The public health, welfare and interest require a strong and effective consumer protection program to protect the interest of both the consuming public and the legitimate businessperson.

Ala. Code 1975, § 8-19-3(3)

Goods . . . includes . . . any *franchise*, license, distributorship, or other similar right, privilege or interest.

Ala. Code 1975, § 8-19-6

It is the intent of the legislature that in construing § 8-19-5 due consideration and great weight shall be given where applicable to interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Federal Trade Commission Act, as from time to time amended.

Ala. Rule of Civil Procedure 12(h)(1)

A defense of lack of jurisdiction over the person, *improper venue*, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor include din a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course. All objections to venue shall be raised in a party's first responsive pleading.

STATEMENT OF THE CASE

1. *INTRODUCTION.*

The Alabama Supreme Court's ruling violates every major venue decision of this Court, ignores the three major caveats of *Bremen*, violates due process considerations (by permitting, among other things, a Rule 12 motion to be brought 4 years after the initial responsive pleadi1ng was filed), violates federal constitutional standards for the exercise of jurisdiction by *any* court (i.e., the fundamental requirement that "minimal contacts" be present in order for a court to have jurisdiction over a party, per *Hanson v. Denckla, infra*), and fails to accord any weight whatsoever to the public policy considerations implicit in the Alabama DTPA and *Bremen*.

The instant case further illustrates the need (per *Kubis, infra*) for implementation by this Court of a "presumption of invalidity" to govern forum selection

clauses in cases where viable consumer protection claims are raised.

In the instant case, Petitioners, Alabama citizens, sought to assert consumer protection claims under the Alabama DTPA, but were told those claims must be litigated in Virginia.

In the underlying suit, Petitioners had sued their former field manager, recruiters, site selection personnel, franchisor and subfranchisor for falsely representing various aspects of a Precision Tune auto repair franchise into which Petitioners invested, and lost, their life savings. In the Complaint filed in the Circuit Court of Madison County, Alabama, Petitioners asserted that Respondents grossly misrepresented the sales potential, profitability and capitalization needs of the business, in addition to overstating the extensiveness, quality and availability of field support, site selection expertise, and onsite training. Petitioners also alleged that at the time the aforesaid promises were made, the Respondents knew the training and support either (i) would not be available, (ii) would not be provided, or (iii) did not even exist. No material allegation set forth in the Complaint, either regarding venue or the merits, was ever contested. No answer was ever filed, even though at the time a venue change was requested, the parties were on the brink of trial. R:5-18 ("R" hereinafter refers to "Record Below").

In addition to the above-referenced breaches and negligence, the Complaint alleged that Respondents breached numerous oral and written promises made to

Petitioners during recruitment, improperly delayed site approval for over a year, and collectively and negligently caused the total loss of Petitioners' capital investment through gross mismanagement, managerial neglect and outright fraud. R:5-18.

For four years, the parties engaged in minimal discovery. Then, on the brink of trial, the Madison County Circuit Court postponed trial, and then entertained, and ultimately granted, an untimely Rule 12(h) motion from Respondents which belatedly challenged venue.

Though some litigants had never set foot in Virginia, and could not conceivably have been constitutionally subjected to jurisdiction there, the trial court sent all six parties and their claims to Virginia, a forum that was not only inconvenient, but had neither personal nor subject matter jurisdiction over the parties or controversy.

2. ***APPLICABLE LAW.***

The trial court's order of dismissal directly contravened substantive due process rights of the Petitioners (Mrs. Frakes had never set foot in Virginia, much less signed the agreement containing the forum selection clause), federal jurisdictional law, and this Court's rulings in *Bremen*, and progeny. Yet both the Alabama Court of Civil Appeals (J. Murdock, *dissenting*), and the Alabama Supreme Court (which dismissed the appeal on frivolous grounds), affirmed the trial court's dismissal. Neither appellate court issued a written opinion. Petitioners challenged the validity of the trial

court's ruling, both in oral argument before the trial court, and at each level of the Alabama appellate courts.

The United States Constitution directs and requires that the various state courts exercise jurisdiction over disputes that arise within their boundaries and, more importantly, that said courts adhere to the prior venue rulings of this Court (e.g., *Bremen*). In the instant case, the Alabama courts – at virtually every level – ignored the holdings and caveats of *Bremen* and *Hanson* and, consequently, issued a decision that directly controverts federal law. That decision must be vacated and remanded, with instructions.

The law in this area is clear. Because the state where the case was ultimately sent (Virginia), could not constitutionally exercise jurisdiction over four of the six parties sent there, dismissal was improper. Virginia did not have even "minimal contacts" with four of the six parties. In ruling Virginia was an appropriate forum, several boilerplate principles of federal jurisdictional law eluded the Alabama courts, including basic standards governing substantive due process, venue, and federal jurisdiction (e.g., the "minimum contacts" required to constitutionally sustain jurisdiction in any state or federal court). *Hanson v. Denckla*, 357 U.S. 235 (1958).

For these and other reasons mentioned below, a writ of certiorari should be issued to (a) correct the Alabama Supreme Court's erroneous affirmation of the trial court's dismissal, and (b) establish a "presumptive invalidity" for forum selection clauses offered as a basis for change of venue in consumer protection cases.

3. *FACTS MATERIAL TO CONSIDERATION.*

The salient facts of the instant are easily summarized. In 1994, Larry and Teresa Frakes were involved in a series of meetings and discussions wherein they were recruited to invest in a Precision Tune auto repair franchise by their neighbor William Grimaud, and by John A. Garies, Jr., a recruiter, manager and site evaluator for Grimaud Enterprises, Inc., the exclusive subfranchisor for Precision Tune franchises in northern Alabama. R:5-18, 211-215, 231-234, 246-253, 341-348.

In November of that same year, Larry (but not Teresa) Frakes signed a franchise agreement with Precision Tune, Inc. in Leesburg, Virginia. The Precision Tune agreement contained a clause specifying Virginia as the forum for resolving conflicts. R:311. Neither Mrs. Frakes, Garies, Grimaud, nor Grimaud Enterprises, Inc. were signators to any written agreement, though the latter three were each alleged to have made various false assurances and promises to Petitioners regarding the training and field support that would be provided, in order to induce the Frakes to invest in the franchise. R: 5-8.

For over a year after the agreement was signed, Precision Tune and Garies refused to approve a site for the Frakes' franchise, which was originally scheduled to be located in Huntsville, Madison County, Alabama (where the Frakes lived, and where suit was ultimately filed). In fact, Precision Tune rejected every single site request the Frakes made for the Huntsville area, and eventually approved a site in sparsely-populated Athens. R:236,341-345.

Soon after startup, Mr. and Mrs. Frakes discovered that the Respondents had, among other things, understated capitalization requirements, overstated profits and sales, and delivered inadequate advertising support. Shortly after the store opened, the Frakes began to seriously question the competency and quality of the field support being rendered, particularly when (a) a highway closure directly in front of the Frakes' store apparently eluded Precision Tune operatives, including Garies, during their so-called "highly-sophisticated" site-approval process, and (b) the Frakes' field manager cancelled the grand opening (because the base on the wheel balancer was a different color than the balancer itself). Because the Frakes were novice business people, Precision Tune's promises of extensive field support and training (purportedly the best in the industry), were integral components of the decision to invest. R:5-18,211-215,341-345.

In 1997, after the business failed, the Frakes filed a Complaint in the Madison County Circuit Court asserting claims under the Alabama DTPA, as well as various common law claims. The Alabama DTPA provides state attorney general supervision over pending litigation, restraining orders to halt deceptive practices, discovery procedures (including state attorney general subpoena power), a private right of action, and treble damages. *Ala. Code 1975, §§ 8-19-8, 8-19-9, 8-19-10* — all of which would be completely eviscerated by referring a DTPA case to a foreign forum.

In any event, Respondents waited four years after suit was filed and then, when trial was imminent, finally filed a Rule 12(h) motion requesting a change of venue. They did so even though they were aware of the forum selection clause from the beginning (the clause was in the parties' franchise agreement).

Respondents argued that their delay resulted from their reliance on ever-changing Alabama decisional law. This delay occurred despite the fact that (a) Ala. Rule of Civil Procedure 12(h) requires venue objections to be asserted in the first responsive pleading, and (b) at the time suit was filed, the Alabama Supreme Court had previously issued rulings in *Professional Insurance Corp. v. Sutherland*, 700 So.2d 347 (1997) and *Ex parte CTB, Inc.*, 782 So.2d 188 (2000), holding that forum selection clauses were *per se* enforceable. Even so, the Respondents waited over four years after *Sutherland*, and 10 months after *CTB*, before moving for a change of venue. This should have, but did not, bother the Alabama Supreme Court which, rather than consider the merits of the appeal, dismissed on the basis that the petition was non-conforming – a frivolous ruling that is inconsistent with the record below.

In that proceeding, the Alabama Supreme Court rejected Petitioners' first certiorari petition, and ordered Petitioners to file a second, ruling the first was non-conforming. Though the first petition was conforming, Petitioners nevertheless timely filed a second petition, only to have it struck down by the court, which then inexplicably reinstated the first.

Shortly thereafter, the Alabama Supreme Court promptly dismissed the first petition, purportedly on the basis that it did not comply with Ala. Sup. Ct. Rule 39. That court never stated, at any time during the proceeding, exactly what aspects of the initial petition were non-conforming. Moreover, prior to dismissal, the clerk of that court refused to provide counsel with an exemplary copy of a conforming brief.

4. ***RECORD BELOW.***

Venue determinations are necessarily fact-specific. In this case, even the evidence offered by the Respondents in the court below, reflects Virginia was not a proper forum, and undercuts the appellate rulings affirming the trial court's order of dismissal. In fact, every fact conceivably related to venue, points to Alabama.

For example, Respondents offered deposition testimony of Mr. Frakes which, ironically enough, completely contradicted Respondents' announced stance on venue. In that testimony, Mr. Frakes stated:

> "Well, I live in Madison, Alabama, and this entire concept for me revolved around business in Madison, Alabama. And of course Madison, Alabama, is in Madison County and the franchisee who owns the existing two [Precision Tune] centers in Huntsville had his franchise agreement predated Grimaud Enterprises' role as the area subfranchisor. It was not --- it was a different agreement." R:234.

Even the deposition questioning of defense counsel assumed the parties' relationship had significant contacts with Alabama, including: "When you say one for tota' population that was very difficult to meet you mean in the context of any site in Madison?" R:236.

Likewise, in Mr. Grimaud's deposition, the venue allegations of the Complaint were also confirmed, when he stated: "I opened my center in Florence in September 1994. ... I was 20 percent owner with management interest. . . . John Garies [owned 20 percent of the store]. . . . I believe it was right around March-April time frame I began contracting with Grimaud Enterprises on a contract basis to do shop visits with franchise stores in the [Madison/Florence] area." R:246.

Mr. Grimaud's duties for the company in the Huntsville area were then described as being to: "Visit the stores [in northern Alabama] and assist anyone that had a problem or anything that needed to be assisted with. I would provide them with any kind of information that they needed and assist them in problem areas. ... I [also] began doing site analysis and that sort of thing." Then, in response to a question about having discussions with the Frakes prior to them making an investment, Mr. Grimaud responded in the affirmative when asked if he did that, and if at that time Mr. Frakes was his neighbor. R:231,250. Mr. Grimaud goes on to testify that their [Alabama] meetings took place in the summer of 1994. R:251,252.

As can be readily seen, the record below is replete with numerous irrefutable factual material indicating Madison County was the proper venue, and Virginia an *improper* venue, including unrefuted allegations contained in the pleadings (including the Complaint, twice amended) deposition testimony, interrogatory responses and other factual information.

Despite the voluminous evidence in the record, the trial court, in derogation of every major venue decision previously issued by this Court, dismissed the case for improper venue, thereby forcing all six parties and their claims to Virginia.

5. ***ARGUMENT SUPPORTING ISSUANCE OF WRIT.***

In *Bremen*, this Court ruled that forum selection clauses were "presumptively valid," and should be upheld, *so long as they were fair, reasonable and not contrary to public policy.*

The ruling by the Alabama Supreme Court, affirming the trial court's dismissal and the Alabama Court of Civil Appeals' decision, violates all three major caveats annunciated in *Bremen*. *Bremen* makes it clear that such clauses should not be enforced when it would be patently unfair, unreasonable under the circumstances, or contrary to public policy (e.g., inconsistent with legislative intent as expressed in the Alabama DTPA).

Since issued in 1972, the basic ruling of *Bremen* has never been challenged, i.e., that forum selection clauses in commercial agreements are presumptively valid. However, rarely has this Court elaborated on the *Bremen* caveats, and those caveats are in need of definition, qualification and revision. This is especially true of what presumption, if any, is to be accorded to forum selection clauses brought in conjunction with consumer protection cases under state law.

The instant case bears little resemblance to the circumstances presented in *Bremen*. Unlike Bremen, several parties were exported to a forum with which they had absolutely no proven connection. So, in the first instance, the Alabama Supreme Court's decision stands in blatant defiance of *Bremen*. That is because, in the instant case, Virginia cannot constitutionally exercise jurisdiction over four of the six parties.

Secondly, unlike *Bremen*, enforcement of the forum selection clause vis-a-vis Mr. Frakes (the only Petitioner to sign the agreement containing the clause), is still fundamentally unfair and violative of public policy, insofar as the Alabama DTPA was specifically enacted to protect Mr. Frakes and other Alabama consumers from predatory marketing practices of out-of-state (or in-state) franchisors. *Ala. Code 1975, § 8-19-1, et seq.* This is a far cry from *Bremen*, where the clause was between wholly commercial

entities with relatively equal bargaining power and, more importantly, where there were no countervailing public policy interests involved. Here, on the other hand, there are significant public policy interests involved, i.e., the interest of the State of Alabama in enforcing a remedial statute intended to protect Alabama citizens from fraudulent marketing practices of various in-state (or out-of-state) franchisors. In such a case, there are clear public policy ramifications weighing heavily against exporting the action.

Another factor weighing heavily in favor of remand, is that all material events in the instant case (except, perhaps, the location of the signing of the contract) occurred in Alabama, not Virginia. This also evidences a blatant disregard of *Bremen*.

An additional factor weighing heavily in favor of Alabama being the preferred forum, is the principle of judicial economy, which expresses a strong disinclination against permitting piecemeal litigation of related claims between related parties. *See e.g., Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960); *Steward v. Up North Plastics, Inc.*, 177 F.Supp.2d 953, 959 (USDC Minn. 2001) ; Wright & Miller, *15 Federal Practice and Procedure Juris. 2d*, § 3808 (Multiple Claims) (rev. 2002); *Ex parte Boshell*, 805 S.2d 675 (Ala. 2001).

Last, but not least, is the Alabama Supreme Court's neglect of its own rules and prior decisions, including Rule 12(h) (requiring venue objections to be raised in the first responsive pleading) and *Ex Parte Ben Acadia*, 566 So.2d 486 (1986) (requiring courts to exercise a careful, fact-based inquiry into any forum decision, based on appropriate factors). *See also, Ex parte Prudential Ins. Co. of America*, 721 So.2d 1135, 1139 (1998) (defendant must show, and record must demonstrate, that there exists a more appropriate forum outside the state); *MacPhail v. Oceaneering Intern., Inc.*, 170 F.Supp.2d 718 (S.D. Tex. 2001) (forum selection clause not enforceable when transferee forum could not likely exercise jurisdiction); *Cole v. Oasis Car Wash, Inc.*, 2002 WL 59410 (E.D. La. 2002) ("The forum selection clause cannot be applied to parties that were not parties to the agreement").

Although this Court would not ordinarily concern itself with a state's predilection to violate its own procedural rules, the alleged violation, at least in the instant case, also impacts the due process rights of the Petitioners, who were subjected to a belated and unsubstantiated venue challenge – a challenge that should have never been entertained, much less succeeded. All material facts in the record indicate the venue determination inferentially affirmed by the Alabama

Supreme Court was grossly incorrect, constituting wholesale abandonment of the principles and caveats annunciated in *Bremen* and *Hanson*.

REASONS FOR GRANTING THE PETITION

The Alabama Supreme Court's ruling abrogates every major venue decision of this Court, ignores the three major caveats of *Bremen,* violates due process considerations, ignores federal constitutional standards which are a necessary component of the exercise of jurisdiction by *any* court, and fails to accord any weight whatsoever to the public policy considerations implicit in the Alabama DTPA, and explicitly approved by this Court in *Bremen*. This case further illustrates the need (per *Kubis*) for a "presumption of invalidity" to govern forum selection clauses in cases where viable consumer protection claims are raised.

Never could the timing be more appropriate than now for a ruling on the "presumptive invalidity" of forum selection clauses in cases involving consumer protection claims. During the last 30 years, there has been a tremendous proliferation in the number of state consumer protection statutes enacted to protect victims of corporate fraud, including ordinary consumers lured into investing their life savings into various no-risk "business opportunities" and franchises.

Though this Court has given meaningful guidance over the years on most major venue issues regularly confronting lower courts, it has not defined to what extent the "public policy" considerations identified in *Bremen* should impact presumptions regarding the burden of proof in consumer protection cases where forum selection clauses are present. As a result, courts are exporting cases to foreign forums that, for any number of reasons, have no business being there.

This Court's historical guidance on venue issues has been critical to a disciplined evolution of venue principles and law. In fact, this Court's previous rulings have enabled lower courts to render venue decisions efficiently, accurately and routinely, in almost every case. Inexplicably, however, as the instant case illustrates, this Court's clear pronouncements of applicable venue rules are sometimes ignored, misinterpreted or misapplied. This can result in gross injustice to the parties, increase in confusion over the evolution of the *Bremen* caveats, and/or a detectable deterioration in the deference to this Court's rulings that lower courts are, without question, historically supposed to grant.

The instant case evidences why this Court's continued *and continuing* guidance over the evolution of *Bremen*, and associated venue questions, is indispensable. Since 1972, there has been little exposition on the three *Bremen* caveats, particularly in consumer protection cases.

For the reasons stated above, a "presumption of invalidity" should prevail in such cases, and a writ of certiorari should be issued.

Either way, this case provides a conspicuous example of forum analysis gone awry. Given the undisputed facts, this case simply does not belong in any state except Alabama. An order of remand by this Court, with instructions to reconsider the decision in light of *Bremen* , would suffice to correct a grievous injustice to the Petitioners. In any event, the case presents a prime opportunity for this Court to define to what extent public policy considerations, and remedial consumer protection statutes, should impact daily venue determinations throughout these United States.

CONCLUSION

The Commonwealth of Virginia – which cannot constitutionally exercise jurisdiction over four of the six parties to this action – is not an appropriate forum for this case.

Regardless, the three caveats of *Bremen,* particularly the "public policy" caveat, warrant further definition by this Court, at least with regard to the presumption to be accorded forum selection clauses in consumer protection cases. As Petitioners have explained above, such clauses should be declared "presumptively invalid" in cases where consumer protection claims are being asserted.

For the foregoing reasons, the Petition for Writ of Certiorari should be GRANTED.

Respectfully submitted this 14th day of August, 2003.

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